

PT 95-26

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS

ALLIANCE FOR THE MENTALLY)	Docket No.(s)	93-22-313
ILL OF DUPAGE COUNTY)		
)	PI No.	05-35-100-010
Applicant)		(DuPage County)
)		
v.)		
)		
THE DEPARTMENT OF REVENUE)	George H. Nafziger	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	
)		

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney Robert J. Tonos appeared on behalf of the Alliance for the Mentally Ill of DuPage County. Mr. Robert G. Rybica, Assistant State's Attorney of DuPage County, appeared on behalf of the DuPage County Board of Review.

SYNOPSIS: A hearing was held in this matter on March 13, 1995, to determine whether or not the parcel here in issue and the residence located thereon, qualified for exemption from real estate tax for the 1993 assessment year. Is the Alliance for the Mentally Ill of DuPage County (hereinafter referred to as the "Applicant"), a charitable organization? Did the Applicant own the parcel here in issue and the residence thereon, during all of the 1993 assessment year? Did the Applicant use this parcel and the residence thereon, for charitable purposes during 1993, or was said parcel leased or otherwise used for profit during that year? Following the submission of all of the evidence and a review of the record, it is determined that the Applicant is a charitable organization, and that it owned this parcel during the period January 26, 1993, through December 31, 1993. During the period January 26, 1993, through May 1, 1993, the

residence on this parcel was in the process of being adapted for exempt use. During the period May 1, 1993, through December 31, 1993, said parcel and the residence thereon, were used for charitable purposes as an eight-resident group home for mentally ill persons operated by the DuPage County Health Department.

FINDINGS OF FACT: The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel and the residence thereon, did not qualify for exemption during the 1993 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 6B.

Mr. Jerry Ercolano, president of the Applicant, and Mr. Norman Bartells, program coordinator of residential services for the DuPage County Health Department, were present at the hearing, and testified on behalf of the Applicant.

On November 13, 1993, the DuPage County Board of Review forwarded an Application for Property Tax Exemption To Board of Review, concerning this parcel for the 1993 assessment year, to the Illinois Department of Revenue (Dept. Ex. No. 2). On April 29, 1994, the Department notified the Applicant that it was denying the exemption of the parcel here in issue for the 1993 assessment year (Dept. Ex. No. 3). On May 11, 1994, the president of the Applicant wrote a letter to the Department, requesting a formal hearing in this matter (Dept. Ex. No. 4). The hearing held on March 13, 1995, was held pursuant to that request.

The Applicant was incorporated, pursuant to the "General Not For Profit Corporation Act", of Illinois, on October 1, 1985, for the following purposes:

"The corporation will operate exclusively for charitable or educational purposes as follows:

To establish, encourage, and perpetuate an organization of families and friends of people with mental illness, and to

let them know that they have a friend in DuPage Cty. To protect rights and to promote the welfare, comfort and happiness, and to improve the conditions generally of the mentally ill wherever they may be, whether in institutions, special living conditions, or in private homes; to foster new and improved programs and services, and further the advancement of studies and research for treatment of mental illness; to further means for providing for adequate medical services, employment, housing, care, education, recreation, and other matters for the mentally ill, which may be consistent with the purpose of this corporation; to develop an enlightened and more sympathetic public understanding of the problems of the mentally ill, and of the public responsibilities relative thereto; to solicit and receive funds for the accomplishment of the foregoing purposes."

During 1993, the Applicant sought and supported effective psychiatric and medical treatment for the mentally ill, as well as appropriate housing and vocational training for them. During 1993, the Applicant had no capital, capital stock, or shareholders, and no one profited from the enterprise. In fact, during 1993, the Applicant had no paid employees. During 1993, the Applicant's primary sources of funds were grants, proceeds of fund-raisers, donations, membership dues, rental income, and fees for services.

Prior to 1993, the Applicant and the Mental Health Division of the DuPage County Health Department (hereinafter referred to as the "Mental Health Division"), had operated an Applicant-sponsored, Mental Health Division, supervised, client-operated, vocational workshop. The Applicant, for several years, had been trying to find housing for mentally ill persons within DuPage County. The Illinois Department of Public Aid (hereinafter referred to as "Public Aid"), had a number of former DuPage County residents inap-propriately placed in nursing homes outside of DuPage County. These particular nursing homes had a resident population of more than 50% persons with mental illness. These facilities were classified for the purposes of the federal Medicaid reimbursement program as Institutes for Mental Disease, or IMDs. The Federal Medicaid reimbursement program would not pay for treatment for persons with mental illness in IMDs.

Consequently, the full cost of the care of persons in IMDs was paid for by Public Aid. The Applicant, the Mental Health Division and Public Aid worked out an arrangement, whereby the Applicant applied for and obtained a DuPage County Community Development Block Grant for \$105,000.00, funded with United States Department of Housing and Urban Development (hereinafter referred to as "HUD") Section 202 funds, and then obtained a mortgage secured loan for the balance, and purchased the parcel here in issue and the residence thereon, on January 26, 1993. On January 20, 1993, the Applicant leased this parcel and the residence thereon, to the Mental Health Division for \$1,580.00 per month. This amount was calculated as follows: \$927.00 per month for debt service, \$167.00 per month for building insurance, \$70.00 per month for closing costs amortized over three years, and capitol replacement reserve of \$416.00 per month. The Applicant in February 1993, had completed the financing, and obtained bids for the remodeling of the seven-bedroom, three and a half bath residence, located on this parcel. During March 1993, the interior walls of the entire house were painted, the kitchen was remodeled, and work was done in the three bathrooms. During April 1993, new appliances were ordered, and an electric alarm system was installed. Also, during April, a new roof was put on, as well as new soffiting and guttering, and the siding was painted. A new furnace and air conditioning system were also installed during April 1993. During May 1993, the eight mentally ill residents moved in. The residents were all former DuPage County residents, who had been housed in IMDs. Since this residence had fewer than 16 occupants, it did not qualify as an IMD, and the federal Medicaid reimbursement program would pay for certain care for the residents. The cost to Public Aid to keep a person in an IMD during 1993, was more than \$80.00 per day. The cost to Public Aid to keep a person in this group home was \$67.00 per day, after the Medicaid reimbursement. Consequently, Public Aid allowed the Mental Health Division to pick the

persons to occupy this group home from among the former DuPage County residents, who at that time were housed in IMDs, funded by Public Aid. Since the cost to Public Aid was lower to keep a person in this group home, Public Aid agreed to, and from May 1, 1993, through December 31, 1993, paid the cost of care of the eight residents of this group home. The Mental Health Division provided the staffing, and operated the group home during the period May 1, 1993, through December 31, 1993. The Mental Health Division, after May 1, 1993, staffed the home with four full-time mental health professionals. One of those professionals was on duty each day between 7:00 A.M. and 10:00 P.M. The Mental Health Division also provided a half-time clinical consultant, who was available to consult with the staff in this residence. Between 10:00 P.M. and 6:00 A.M. each day, there was a person designated as an overnight supervisor, who occupied a bedroom and attached private bath, on the main floor of this residence. These facilities were provided to the overnight supervisor rent-free, and utilities paid. This was the primary residence of the overnight supervisor. The overnight supervisor was under contract to the Mental Health Division. The overnight supervisor was required to assist the residents in the preparation of meals, monitor the resident's medication intake, and handle any emergencies concerning the residents, which might arise. It was the clinical judgment of the Mental Health Division that some of the residents of this facility required 24-hour supervision.

1. Based on the foregoing, I find that the Applicant is a charitable organization.

2. I further find that the Applicant owned the parcel here in issue during the period January 26, 1993, through December 31, 1993.

3. Said parcel, I find, was leased by the Applicant to the Mental Health Division during the period January 20, 1993, through December 31, 1993.

4. During the period January 26, 1993, through May 1, 1993, the residence on this parcel was in the process of being adapted for exempt use.

5. During the period May 1, 1993, through December 31, 1993, I find that the Applicant owned this parcel, and leased it to the Mental Health Division for a monthly rent, which allowed the Applicant to recover its acquisition costs and future maintenance expenses.

6. The Mental Health Division, I find, operated a group home for eight mentally ill persons, who had been residents of DuPage County on this parcel during the period May 1, 1993, through December 31, 1993.

7. During the period May 1, 1993, through December 31, 1993, the operating costs of this group home, operated and staffed by the Mental Health Division, were financed by Public Aid.

8. Finally, I find that the overnight supervisor's quarters, located in the residence on this parcel, were reasonably necessary to the operation of this group home.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.7 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

35 ILCS 205/19.9 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All market houses, public squares and other public grounds owned by a municipal corporation and used exclusively for public purposes...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

In the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. I have previously found that the Applicant met each of the first five of the foregoing guidelines during the period January 26, 1993, through December 31, 1993.

Illinois Courts have held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. *Illinois Institute of Technology v. Skinner*, 49 Ill.2d 59 (1971); *People ex rel. Pearsall v.*

Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987). I consequently conclude that the Applicant was in the process of adapting this parcel and the residence thereon, for exempt use during the period January 26, 1993, through May 1, 1993.

For the purposes of 35 ILCS 205/19.9, the Illinois Supreme Court has determined that the term "municipal corporation" includes counties. Skil Corpo-ration v. Korzen, 32 Ill.2d 249 (1965) and Perkins v. County Commissioners of Cook County, 271 Ill. 449 (1916).

Both 35 ILCS 205/19.7 and 35 ILCS 205/19.9 require that for property to be exempt from taxation, an exempt organization must own the property, and an exempt organization must use it for exempt purposes. In Childrens Development Center, Inc. v. Olson, 52 Ill.2d 332 (1972), a Roman Catholic convent, an exempt organization, leased its property to an exempt school, which used the property for school purposes. In that case, the Supreme Court held that the lease was not a lease for profit. That is also the case here where the Applicant, a charitable organization, is leasing property to the Mental Health Division, which is an entity of county government.

With regard to cases involving residential facilities owned by exempt organizations, the Supreme Court in considering whether or not faculty housing at a college qualified for exemption, applied a two-part test. First, were the residents of the houses required to live in their residences because of their exempt duties for the organization, or were they required to, or did they perform any of their exempt duties there? MacMurray College v. Wright, 38 Ill.2d 272 (1967). I have previously found that the overnight supervisor's quarters were reasonably necessary to the operation of this group home.

Based on the foregoing, I conclude that the Applicant, a charitable

organization, owned the parcel here in issue during the period January 26, 1993, through December 31, 1993. I further conclude that this parcel was in the process of being adapted for exempt use during the period January 26, 1993, through May 1, 1993. Finally, I conclude that this parcel and the residence thereon, were used for exempt purposes during the period May 1, 1993, through December 31, 1993.

I therefore recommend that DuPage County parcel No. 05-35-100-010 be exempt from real estate taxation for 93% of the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

May , 1995